Supreme Court, U.S.
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No. 92-1589

In The

Supreme Court of the United States

October Term, 1992

EXXON SHIPPING COMPANY,

Petitioner,

v.

THEODORE M. ELLENWOOD and
ANN M. ELLENWOOD,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENTS' RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE

PETER BENNETT
(Counsel of Record)
FREDERICK B. FINBERG
HERBERT H. BENNETT AND ASSOCIATES, P.A.
121 Middle Street
P.O. Box 7799
Portland, Maine 04112-7799
(207) 773-4775

Attorneys for Respondents

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Respondents Eilenwood oppose the Motion for Leave to File a Brief as Amici Curiae by the American Institute of Merchant Shipping, American Waterways Operators, and Lake Carriers' Association in Support of Petitioner for the following reasons:

1. The instant motion should be dismissed because Movant American Waterways Operators never sought Respondents' consent to file a brief in this case.

2. The instant motion should be dismissed because Movant Lake Carriers' Association never sought Respondents' consent to file a brief in this case.

3. The Motion and Brief as Amici Curiae should be dismissed because they do not comply with Rule 9.1 of this Court.

4. Rule 37.2 of this Court specifically provides that the instant motion "is not favored."

5. Upon information and belief, Respondents believe that Petitioner is a member of one or more of the movant organizations and that the Amici brief is merely Petitioner's veiled attempt to reargue the first question presented in its Petition for Writ of Certiorari.

6. The Motion and accompanying Brief merely rehash the arguments already presented to the Court.

7. Movants' argument based upon the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 *et seq.* ("ADA") is meritless. The purported uniformity issues have actually been rendered largely academic by the ADA. The ADA's anti-preemption provisions allow the application of state laws of greater or equal protection to a case such as the instant one (assuming it were to arise

after the July 25, 1992 effective date of the ADA, 42 U.S.C. §12201(b)). Congress has not created any special exception to these standards for maritime employers.

8. The reference to *Kossick v. United Fruit Co.*, 365 U.S. 731 (1961) misreads the import of that decision. There the Court was concerned with the use of state law to invalidate maritime rights. The Court specifically distinguished that situation from one "where state law had the effect of supplementing the remedies available in admiralty for the vindication of maritime rights." *Id.*, 365 U.S. at 741-42.

9. Furthermore, the facts of this case do not threaten uniformity. Under the ADA, perceived alcoholics are protected as individuals with a disability 42 U.S.C. §12114.

WHEREFORE, Respondents respectfully pray that the Court deny the motion.

Dated: Portland, Maine
June 9, 1993

Respectfully submitted,

PETER BENNETT
(Counsel of Record)
FREDERICK B. FINBERG
HERBERT H. BENNETT AND ASSOCIATES, P.A.
121 Middle Street – P.O. Box 7799
Portland, ME 04112-7799
(207) 773-4775

Attorneys for Respondents